

SENATE BILL 358

K4, F1

11r1943
CF HB 1088

By: **Senator Jones-Rodwell (Chair, Joint Committee on Pensions)**

Introduced and read first time: February 3, 2011

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2011

CHAPTER _____

1 AN ACT concerning

2 **Audit Responsibilities – ~~Local Education Agencies, Community Colleges, and~~**
3 **~~Public Libraries – Employer Pension Contributions~~ State Department of**
4 **Education, Maryland Higher Education Commission, and State Retirement**
5 **Agency**

6 FOR the purpose of requiring the county boards of education to conduct certain audits
7 under certain circumstances; requiring certain local school systems to
8 reimburse the State for certain employer contributions for certain employees
9 participating in the Teachers' Retirement System or the Teachers' Pension
10 System; providing that the State Department of Education may authorize
11 certain county boards of education and public libraries to conduct certain
12 audits; authorizing the State Department of Education, rather than the State
13 Retirement Agency, to conduct certain audits of local school systems and public
14 libraries to determine if certain employer contributions have been paid
15 appropriately to the State Retirement and Pension System; ~~altering a provision~~
16 ~~relating to the employees included for purposes of certain audits as eligible for~~
17 ~~State payment of retirement contributions; clarifying that certain audits~~
18 conducted by certain groups may be conducted in a certain manner; requiring
19 that reimbursements for certain audits be applied to the State Department of
20 Education, certain county boards of education, the Maryland Higher Education
21 Commission, certain public junior or community colleges, certain public
22 libraries, and the General Fund in a certain manner; requiring certain county
23 boards of education and public libraries to provide certain documentation to the
24 State Department of Education under certain circumstances; providing that the
25 Maryland Higher Education Commission may authorize certain public junior or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 community colleges to conduct certain audits; authorizing the Maryland Higher
 2 Education Commission, rather than the State Retirement Agency, to conduct
 3 certain audits of public junior or community colleges to determine if certain
 4 employer contributions have been paid appropriately to the State Retirement
 5 and Pension System; ~~requiring that certain reimbursements determined from~~
 6 ~~performing certain audits of local school systems, public junior or community~~
 7 ~~colleges, and public libraries be credited entirely to the General Fund; requiring~~
 8 certain public junior or community colleges to provide certain documentation to
 9 the Maryland Higher Education Commission under certain circumstances;
 10 clarifying that the State Retirement Agency may perform certain audits of
 11 certain participating employers; requiring that if certain audits by the State
 12 Retirement Agency reveal certain information, certain actions shall be taken
 13 and certain payments shall be made to the State Retirement and Pension
 14 System; and generally relating to performing audits of local school systems,
 15 public junior or community colleges, and public libraries for purposes of
 16 determining if employer and member contributions have been paid
 17 appropriately to the State Retirement and Pension System.

18 BY repealing and reenacting, with amendments,
 19 Article – Education
 20 Section ~~5–109~~, 5–203, 16–306, and 23–504
 21 Annotated Code of Maryland
 22 (2008 Replacement Volume and 2010 Supplement)

23 BY repealing and reenacting, with amendments,
 24 Article – State Personnel and Pensions
 25 Section ~~21–121~~
 26 Annotated Code of Maryland
 27 (2009 Replacement Volume and 2010 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 29 MARYLAND, That the Laws of Maryland read as follows:

30 **Article – Education**

31 5–109.

32 (a) **(1)** Each county board shall provide for an annual audit of its financial
 33 transactions and accounts.

34 **(2)** AT THE REQUEST OF THE DEPARTMENT, A COUNTY BOARD
 35 SHALL CONDUCT AN AUDIT UNDER § 5–203 OF THIS TITLE.

36 (b) (1) The audit shall be made by a certified public accountant or a
 37 partnership of certified public accountants who are:

38 (i) Licensed by the State Board of Public Accountancy; and

1 (ii) Approved by the State Superintendent.

2 (2) The audit shall be made in accordance with the standards and
3 regulations adopted by the State Board.

4 (c) (1) The results of the audit, including the letter of recommendation
5 submitted by the auditor, are a matter of public record.

6 (2) The results shall be reported within 3 months after the close of the
7 fiscal year for the county board on the form and in the manner required by the State
8 Board to:

9 (i) The State Superintendent;

10 (ii) The county fiscal authority;

11 (iii) The Joint Audit Committee of the General Assembly;

12 (iv) The Senate Budget and Taxation Committee;

13 (v) The Senate Education, Health, and Environmental Affairs
14 Committee;

15 (vi) The House Appropriations Committee; and

16 (vii) The House Committee on Ways and Means.

17 (d) In addition to the audit required by this section, the county
18 commissioners or county council may conduct an audit using auditors employed by the
19 county.

20 5-203.

21 ~~(a) In this section, "Agency" means the State Retirement Agency.~~

22 **(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LOCAL**
23 **SCHOOL SYSTEM SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER**
24 **CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:**

25 **(I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM**
26 **OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE**
27 **PERSONNEL AND PENSIONS ARTICLE; AND**

28 **(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER**
29 **THAN STATE OR LOCAL AID.**

1 **(2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN**
 2 **PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE LOCAL SCHOOL**
 3 **SYSTEM SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S**
 4 **PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY**
 5 **A SOURCE OTHER THAN STATE OR LOCAL AID.**

6 ~~(b)~~ (1) ~~The [Agency] DEPARTMENT~~ **TO ENSURE THAT EACH LOCAL**
 7 **SCHOOL SYSTEM IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER**
 8 **SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT OR, AT THE**
 9 **DEPARTMENT'S REQUEST, A COUNTY BOARD** may at any time examine the records
 10 of local school systems to determine whether the State's payments for retirement
 11 contributions for employees of the school systems are in accordance with the
 12 provisions of Division II of the State Personnel and Pensions Article.

13 ~~(2) In making the determination under paragraph (1) of this~~
 14 ~~subsection, the [Agency] DEPARTMENT shall include as employees eligible for State~~
 15 ~~payment of retirement contributions those employees:~~

16 ~~(i) Whose salaries are funded by State or local aid, whether~~
 17 ~~general or categorical in nature; and~~

18 ~~(ii) Who] WHO are members of the Teachers' Pension System or~~
 19 ~~Teachers' Retirement System.~~

20 **(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS**
 21 **SUBSECTION MAY BE:**

22 **(I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL**
 23 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

24 **(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**
 25 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**
 26 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

27 **(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

28 ~~{(c)}~~ ~~(d)~~ (1) (i) If an examination of the records of a local school
 29 system shows that the State has paid more than is required under Division II of the
 30 State Personnel and Pensions Article, within 30 days after the date of the notice to the
 31 school system of the State overpayment, the school system may appeal the notice of
 32 State overpayment to the Secretary of Budget and Management who shall appoint a
 33 hearing examiner who is an attorney.

34 (ii) The hearing examiner shall make recommendations to the
 35 Secretary of Budget and Management who shall make a determination regarding the
 36 amount, if any, of the State overpayment.

1 (iii) Should a local school system request a transcript of an audit
2 appeals hearing, the local school system shall provide and pay for the production of the
3 transcript.

4 (2) At the request of the Department of ~~Education~~ the moneys owed
5 shall be deducted from any other State funds that would otherwise be paid to the
6 school system if:

7 (i) A local school system does not appeal to the Secretary of
8 Budget and Management or to the Office of Administrative Hearings; or

9 (ii) The Office of Administrative Hearings determines that the
10 State is due reimbursement for excess payments as provided in paragraph (3) of this
11 subsection.

12 (3) (i) The local school system may appeal to the Office of
13 Administrative Hearings a determination by the Secretary of Budget and
14 Management regarding the amount, if any, of the State overpayment.

15 (ii) Within 45 days after the close of the hearing record, the
16 Office of Administrative Hearings shall issue a written decision to the parties and may
17 grant any appropriate remedy.

18 (iii) The written decision issued by the Office of Administrative
19 Hearings is the final finding of fact and conclusion of law and binding on all parties
20 and is not subject to judicial review.

21 ~~[(d)] (c)~~ **(1)** Any reimbursements ~~which result from audits under this~~
22 ~~section~~ **UNDER SUBSECTION (A) OF THIS SECTION**;

23 ~~(1)~~ **(I)** Shall be applied first to ~~reimburse the Agency~~ **THE COST OF**
24 **ANY AUDIT OR PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS**
25 **SECTION TO REIMBURSE EITHER THE DEPARTMENT OR THE COUNTY BOARD** for
26 the expenses of the audits; and

27 ~~(2)~~ **(II)** After reimbursement to the ~~Agency under item (1) of this~~
28 ~~subsection,~~ **DEPARTMENT OR COUNTY BOARD UNDER ITEM (I) OF THIS**
29 **PARAGRAPH,** shall be credited to the General Fund.

30 **(2)** **IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A**
31 **COUNTY BOARD, BEFORE THE COUNTY BOARD IS REIMBURSED UNDER**
32 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COUNTY BOARD SHALL PROVIDE**
33 **DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF**
34 **THE AUDIT INCURRED BY THE COUNTY BOARD ARE REASONABLE.**

1 16-306.

2 (a) **(1)** ~~In this section, [“Agency”] “COMMISSION” means the [State~~
 3 ~~Retirement Agency] MARYLAND HIGHER EDUCATION COMMISSION.~~ **SUBJECT TO**
 4 **PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC JUNIOR OR COMMUNITY**
 5 **COLLEGE SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER**
 6 **CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:**

7 **(I) IS A MEMBER OF THE TEACHERS’ RETIREMENT SYSTEM**
 8 **OR THE TEACHERS’ PENSION SYSTEM UNDER DIVISION II OF THE STATE**
 9 **PERSONNEL AND PENSIONS ARTICLE; AND**

10 **(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER**
 11 **THAN STATE OR LOCAL AID.**

12 **(2) TO THE EXTENT THAT AN EMPLOYEE’S SALARY IS FUNDED IN**
 13 **PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC JUNIOR OR**
 14 **COMMUNITY COLLEGE SHALL REIMBURSE THE STATE A PRO RATA SHARE OF**
 15 **THE STATE’S PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE’S**
 16 **SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.**

17 (b) **(1)** ~~The [Agency] COMMISSION~~ **TO ENSURE THAT THE PUBLIC**
 18 **JUNIOR OR COMMUNITY COLLEGE IS PROPERLY REIMBURSING THE STATE AS**
 19 **PROVIDED UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION OR, AT**
 20 **THE COMMISSION’S REQUEST, A PUBLIC JUNIOR OR COMMUNITY COLLEGE** may
 21 at any time examine the records of public junior or community colleges to determine
 22 whether the State’s payments for retirement contributions for employees of the public
 23 junior or community colleges are in accordance with the provisions of Division II of the
 24 State Personnel and Pensions Article.

25 **(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS**
 26 **SUBSECTION MAY BE:**

27 **(I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL**
 28 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

29 **(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**
 30 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**
 31 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

32 **(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

33 (c) (1) (i) If an examination of the records of a public junior or
 34 community college shows that the State has paid more than is required under Division
 35 II of the State Personnel and Pensions Article, within 30 days after the date of the

1 notice to the junior or community college of the State overpayment, the junior or
2 community college may appeal the notice of State overpayment to the Secretary of
3 Budget and Management who shall appoint a hearing examiner.

4 (ii) The hearing examiner shall make recommendations to the
5 Secretary of Budget and Management who shall make a final determination regarding
6 the amount, if any, of the State overpayment.

7 (2) If a public junior or community college does not appeal to the
8 Secretary of Budget and Management or if the Secretary of Budget and Management
9 determines that the State is due reimbursement for excess payments, as provided in
10 paragraph (1) of this subsection, at the request of the [Agency] COMMISSION the
11 moneys owed shall be deducted from any other State funds that would otherwise be
12 paid to the public junior or community college.

13 (3) For purposes of the Administrative Procedure Act, an appeal taken
14 under this section is not a contested case.

15 (d) **(1)** Any reimbursements ~~which result from audits under this section~~
16 **UNDER SUBSECTION (A) OF THIS SECTION:**

17 ~~(1)~~ **(I)** Shall be applied first to ~~reimburse the Agency~~ **THE COST OF**
18 **ANY AUDIT OR PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS**
19 **SECTION TO REIMBURSE EITHER THE COMMISSION OR THE PUBLIC JUNIOR OR**
20 **COMMUNITY COLLEGE** for the expenses of the audits; and

21 ~~(2)~~ **(II)** After reimbursement to the ~~Agency under item (1) of this~~
22 ~~subsection,~~ **COMMISSION OR THE PUBLIC JUNIOR OR COMMUNITY COLLEGE**
23 **UNDER ITEM (I) OF THIS PARAGRAPH,** shall be credited to the General Fund.

24 **(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A**
25 **PUBLIC JUNIOR OR COMMUNITY COLLEGE, BEFORE THE PUBLIC JUNIOR OR**
26 **COMMUNITY COLLEGE IS REIMBURSED UNDER PARAGRAPH (1)(I) OF THIS**
27 **SUBSECTION, THE PUBLIC JUNIOR OR COMMUNITY COLLEGE SHALL PROVIDE**
28 **DOCUMENTATION TO THE COMMISSION THAT THE INCREMENTAL COSTS OF THE**
29 **AUDIT INCURRED BY THE PUBLIC JUNIOR OR COMMUNITY COLLEGE ARE**
30 **REASONABLE.**

31 23-504.

32 ~~(a) In this section, "Agency" means the State Retirement Agency.~~

33 **(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC**
34 **LIBRARY SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER**
35 **CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:**

1 (I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM
 2 OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE
 3 PERSONNEL AND PENSIONS ARTICLE; AND

4 (II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER
 5 THAN STATE OR LOCAL AID.

6 (2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN
 7 PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC LIBRARY
 8 SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S PAYMENT
 9 BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY A
 10 SOURCE OTHER THAN STATE OR LOCAL AID.

11 ~~(b) (1) The [Agency] DEPARTMENT~~ TO ENSURE THAT EACH PUBLIC
 12 LIBRARY IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER
 13 SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT OR, AT THE
 14 DEPARTMENT'S REQUEST, A PUBLIC LIBRARY may at any time examine the
 15 records of public libraries to determine whether the State's payments for retirement
 16 contributions for employees of the public libraries are in accordance with the
 17 provisions of Division II of the State Personnel and Pensions Article.

18 (2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS
 19 SUBSECTION MAY BE:

20 (I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL
 21 AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;

22 (II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL
 23 FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE
 24 PROGRAMS AND TESTED INDEPENDENTLY; OR

25 (III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

26 ~~{(c)} (B)~~ (1) (i) If an examination of the records of a public library
 27 shows that the State has paid more than is required under Division II of the State
 28 Personnel and Pensions Article, within 30 days after the date of the notice to the
 29 library of the State overpayment, the public library may appeal the notice of State
 30 overpayment to the Secretary of Budget and Management who shall appoint a hearing
 31 examiner.

32 (ii) The hearing examiner shall make recommendations to the
 33 Secretary of Budget and Management who shall make a final determination regarding
 34 the amount, if any, of the State overpayment.

35 (2) If a public library does not appeal to the Secretary of Budget and
 36 Management or if the Secretary of Budget and Management determines that the State

1 is due reimbursement for excess payments as provided in paragraph (1) of this
 2 subsection, at the request of the Department of ~~Education~~ the moneys owed shall be
 3 deducted from any other State funds that would otherwise be paid to the public
 4 library.

5 (3) For purposes of the Administrative Procedure Act, an appeal taken
 6 under this section is not a contested case.

7 ~~{(d)} (C)~~ **(1) Any reimbursements which result from audits under this**
 8 ~~section~~ **UNDER SUBSECTION (A) OF THIS SECTION**;

9 ~~(1)~~ **(I)** Shall be applied first to reimburse the Agency **THE COST OF**
 10 **ANY AUDIT OR PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS**
 11 **SECTION TO REIMBURSE EITHER THE DEPARTMENT OR THE PUBLIC LIBRARY**
 12 for the expenses of the audits; and

13 ~~(2)~~ **(II)** After reimbursement to the Agency under item (1) of this
 14 ~~subsection,~~ **DEPARTMENT OR PUBLIC LIBRARY UNDER ITEM (I) OF THIS**
 15 **PARAGRAPH,** shall be credited to the General Fund.

16 **(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A**
 17 **PUBLIC LIBRARY, BEFORE THE PUBLIC LIBRARY IS REIMBURSED UNDER**
 18 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE PUBLIC LIBRARY SHALL PROVIDE**
 19 **DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF**
 20 **THE AUDIT INCURRED BY THE PUBLIC LIBRARY ARE REASONABLE.**

21 **Article – State Personnel and Pensions**

22 **21–121.**

23 **(A) [Whenever an audit of the records of an educational institution, public**
 24 **library, or school system reveals that the institution, library, or school system owes**
 25 **money to the accumulation fund of the Teachers’ Retirement System or the Teachers’**
 26 **Pension System, the State Retirement Agency may collect the delinquent payment as**
 27 **provided under §§ 5–203, 16–306, and 23–504 of the Education Article.] THE STATE**
 28 **RETIREMENT AGENCY MAY AT ANY TIME EXAMINE THE RECORDS OF A**
 29 **PARTICIPATING EMPLOYER TO DETERMINE WHETHER THE PAYMENT OF**
 30 **BENEFITS TO A PARTICIPANT AND THE PAYMENT OF CONTRIBUTIONS BY A**
 31 **PARTICIPATING EMPLOYER OR PARTICIPANT ARE AND WILL BE IN ACCORDANCE**
 32 **WITH THE PROVISIONS OF DIVISION II OF THIS ARTICLE.**

33 **(B) WHENEVER AN AUDIT REVEALS THAT THE PAYMENT OF BENEFITS**
 34 **TO A PARTICIPANT OR THE PAYMENT OF CONTRIBUTIONS BY A PARTICIPATING**
 35 **EMPLOYER OR PARTICIPANT IS NOT IN ACCORDANCE WITH THE PROVISIONS OF**
 36 **DIVISION II OF THIS ARTICLE:**

1 **(1) THE STATE RETIREMENT AGENCY AND PARTICIPATING**
2 **EMPLOYER SHALL CORRECT THEIR RECORDS; AND**

3 **(2) (I) THE PARTICIPATING EMPLOYER SHALL PAY ANY**
4 **AMOUNTS OWED TO THE ACCUMULATION FUND OF THE APPROPRIATE STATE**
5 **SYSTEM; AND**

6 **(II) THE MEMBER CONTRIBUTIONS OWED BY THE**
7 **PARTICIPANT SHALL BE MADE BY THE PARTICIPANT IN ACCORDANCE WITH §**
8 **21-312(E) OF THIS TITLE.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 July 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.